

IN THE UNITED STATES DISTRICT COURT  
FOR WESTERN DISTRICT OF PENNSYLVANIA

FLEMING FITZGERALD &  
ASSOCIATES, LIMITED, FISH AND  
GAME FRONTIERS, INC. d/b/a  
FRONTIERS INTERNATIONAL, INC.,  
PONOIR RIVER COMPANY and  
SHACKLETON INTERNATIONAL  
LIMITED,

Plaintiffs,

v.

U.S. SPECIALTY INSURANCE  
COMPANY,

Defendant and  
Third-Party Plaintiff,

v.

ZURICH AMERICAN INSURANCE  
COMPANY and STEADFAST  
INSURANCE COMPANY,

Third-Party  
Defendants.

CIVIL ACTION NO. 07-1596

Hon. Gary L. Lancaster

**STIPULATION OF DISMISSAL OF THIRD-PARTY COMPLAINT WITH PREJUDICE  
AND OF CONSENT TO THE AMENDMENT OF DEFENDANT'S ANSWER  
AND AFFIRMATIVE DEFENSES**

The parties hereto, Plaintiffs Fleming Fitzgerald & Associates, Ltd., Fish and Game Frontiers Inc., Ponoir River Company and Shackleton International Ltd. ("Plaintiffs"), Defendant and Third-Party Plaintiff U.S. Specialty Insurance Company ("U.S. Specialty") and Third-Party Defendants Zurich American Insurance Company and Steadfast Insurance Company ("Third Party Defendants"), hereby stipulate and agree as follows:

Pursuant to Rule 41(a)(1)(A)(ii) of the Federal Rules of Civil Procedure, all Parties stipulate to the dismissal with prejudice of U.S. Specialty's Third-Party Complaint against Third Party Defendants.

The parties hereto agree that this Stipulation shall not in any way affect the status of the Partial Summary Judgment Motions filed by U.S. Specialty and currently pending before the Court.

Plaintiffs, without in any way admitting the merits of such defense, hereby consent to Defendant U.S. Specialty's amendment of its Answer and Affirmative Defenses to expand its affirmative defense asserting set-off to clarify that U.S. Specialty is asserting entitlement to a right of set-off against any amounts for which it might otherwise be liable to Plaintiffs in an amount equal to: (a) all or some of the amounts covered under the insurance policies issued by the Third Party Defendants or (b) the Third Party Defendants' settlement payments to Plaintiffs. Plaintiffs' consent to this amendment shall not be deemed consent to any other amendment that Defendant may seek leave to make to its Answer and Affirmative Defenses.

The parties hereto further agree that no party to this litigation may introduce this Stipulation as evidence in this action or in any other proceeding, for any purposes, except to enforce its terms, and no party shall claim that any other party's consent to this Stipulation in any way supports or refutes any allegation, claim or defense of such other party, whether asserted in this action or any other proceeding. Nothing in this agreement shall in any way affect the right of any party to introduce evidence of the date on which Defendant's Third-Party Complaint was dismissed or evidence of the reasons for such dismissal.

Dated: February 9, 2009

**Counsel for Defendant and Third Party Plaintiff:**

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SO ORDERED, this 17<sup>th</sup> day of February, 2009.

  
Hon. Garv L. Lancaster, U.S. District Judge